

AMENDED IN ASSEMBLY AUGUST 24, 2012

AMENDED IN ASSEMBLY JULY 12, 2011

AMENDED IN ASSEMBLY JUNE 15, 2011

AMENDED IN SENATE MAY 23, 2011

AMENDED IN SENATE APRIL 14, 2011

SENATE BILL

No. 568

Introduced by Senator Lowenthal

(Coauthors: Assembly Members Brownley, Chesbro, Skinner, and
Wieckowski)

February 17, 2011

An act to add Chapter 6.6 (commencing with Section 42391) to Part 3 of Division 30 of the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

SB 568, as amended, Lowenthal. Recycling: polystyrene food containers.

Existing law requires all rigid plastic bottles and rigid plastic containers sold in the state to be labeled with a code that indicates the resin used to produce the rigid plastic bottle or rigid plastic container. The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, requires every rigid plastic packaging container, as defined, sold or offered for sale in this state to generally meet one of specified criteria.

This bill would prohibit a food vendor, on and after January 1, 2016, from dispensing prepared food to a customer in a polystyrene foam food container and would define related terms. The bill would provide that a food vendor that is a school district is not required to comply with

the bill's requirements until July 1, 2017, and would allow a food vendor that is a school district to dispense prepared food to a customer in a polystyrene foam food container after that date if the governing board of the school district elects to adopt a policy to implement a verifiable recycling program for polystyrene foam food containers, which would be renewable, as specified. The bill would also allow a food vendor to dispense prepared food to a customer in a polystyrene foam food container after January 1, 2016, in a city or county if the city or county elects to adopt an ordinance establishing a specified recycling program for polystyrene foam food containers, which would be operative, as specified.

The bill would allow a food vendor to dispense prepared food to a customer in a polystyrene foam food container in a city or county if that food vendor demonstrates to the satisfaction of the city or county that compliance with the requirements of the bill would impose an undue economic hardship, as defined. The bill would authorize a city or county to exempt the food vendor until January 1, 2017, or for a period of not more than one year from the date of the demonstration, and would allow a food vendor to reapply for additional one-year exemptions from the bill's requirements.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 6.6 (commencing with Section 42391)
2 is added to Part 3 of Division 30 of the Public Resources Code, to
3 read:

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5 CHAPTER 6.6. POLYSTYRENE FOAM FOOD CONTAINERS

6

7 42391. For the purposes of this chapter, the following terms
8 have the following meanings:

9 (a) "Customer" means a person obtaining prepared food from
10 a food vendor.

11 (b) (1) "Polystyrene foam food container" means a container
12 made of blown polystyrene and expanded and extruded foam that
13 are thermoplastic petrochemical materials utilizing the styrene
14 monomer and the container meets all of the following conditions:

1 (A) Polystyrene is the sole resin used to produce the rigid plastic
2 packaging container.

3 (B) The container is required to be labeled with a “6” pursuant
4 to subdivision (a) of Section 18015.

5 (C) The container is used, or is intended to be used, to hold
6 prepared food.

7 (2) A polystyrene foam food container may be processed by a
8 number of techniques, including, but not limited to, fusion of
9 polymer spheres or expandable bead polystyrene.

10 (3) Polystyrene foam may also be referred to as Styrofoam™,
11 a Dow Chemical Company trademarked form of polystyrene foam
12 insulation.

13 (4) A polystyrene foam food container includes, but is not
14 limited to, a cup, bowl, plate, tray, or clamshell container that is
15 intended for single use.

16 (c) (1) “Food vendor” means a food facility, as defined in
17 Section 113789 of the Health and Safety Code, including, but not
18 limited to, a restaurant or retail food and beverage vendor located
19 or operating within the state.

20 (2) A food vendor also includes, but is not limited to, an itinerant
21 restaurant, pushcart, vehicular food vendors, a caterer, a cafeteria,
22 a store, a shop, a sales outlet, or other establishment, including a
23 grocery store or a delicatessen.

24 (3) A food vendor does not include a correctional facility,
25 including, but not limited to, a state prison, county jail, facility of
26 the Division of Juvenile Justice, county- or city-operated juvenile
27 facility, including juvenile halls, camps, or schools, or other state
28 or local correctional institution.

29 (d) “Prepared food” means food, as defined in Section 109935
30 of the Health and Safety Code, including a beverage, that is served,
31 packaged, cooked, chopped, sliced, mixed, brewed, frozen,
32 squeezed, or otherwise prepared for consumption. Prepared food
33 includes “ready-to-eat food,” as defined in Section 113881 of the
34 Health and Safety Code.

35 (1) “Prepared food” does not include raw, butchered meats, fish,
36 or poultry that is sold from a butcher case or a similar retail
37 appliance.

38 (2) “Prepared food” may be eaten either on or off the premises,
39 and includes takeout food.

1 (e) “Recycled” means the product or material is reused in the
2 production of another product and is diverted from disposal in a
3 landfill.

4 (f) “*Undue economic hardship*” means a situation unique to a
5 food vendor in which there are no reasonable alternatives to
6 polystyrene foam food containers in use by that food vendor and
7 compliance with Section 42392 would cause significant economic
8 hardship to that food vendor.

9 42392. Except as provided in Sections 42393~~and~~, 42394, and
10 42394.5, on and after January 1, 2016, a food vendor shall not
11 dispense prepared food to a customer in a polystyrene foam food
12 container.

13 42393. (a) A food vendor that is a school district, as defined
14 in Section 80 of the Education Code, is not required to comply
15 with Section 42392 until July 1, 2017.

16 (b) On and after July 1, 2017, a food vendor that is a school
17 district may dispense prepared food to a customer in a polystyrene
18 foam food container if the governing board of the school district
19 elects to adopt a policy to implement a verifiable recycling program
20 for polystyrene foam food containers under which at least 60
21 percent of the polystyrene foam food containers purchased annually
22 by that school district will be recycled.

23 (c) If the governing board of a school district elects to adopt a
24 policy to implement a recycling program pursuant to subdivision
25 (b), the recycling program shall be effective for not more than five
26 years, and the school district may elect to renew the policy
27 implementing the program continuously for a period not to exceed
28 five years if, at the time of renewal, the school district demonstrates
29 with empirical data that the recycling program is achieving the
30 goal of recycling at least 60 percent of the polystyrene foam food
31 containers generated annually by the school district.

32 42394. (a) On and after January 1, 2016, a food vendor may
33 dispense prepared food to a customer in a polystyrene foam food
34 container in a city or county if either of the following apply:

35 (1) The city elects to adopt an ordinance establishing a recycling
36 program for polystyrene foam food containers for which the city
37 makes a finding, by a majority vote of the city council at a public
38 hearing, that, based on empirical data, at least 60 percent of the
39 polystyrene foam food containers generated annually in the city
40 will be recycled by that program.

1 (2) The county elects to adopt an ordinance establishing a
2 recycling program for polystyrene foam food containers for which
3 the county makes a finding, by a majority vote of the board of
4 supervisors at a public hearing, that, based on empirical data, at
5 least 60 percent of the polystyrene foam food containers generated
6 annually in the county will be recycled by that program.

7 (b) If a city or county elects to adopt an ordinance pursuant to
8 this section, the ordinance shall be operative for no more than five
9 years, and the city or county may elect to readopt the ordinance
10 continuously for an operative period not to exceed five years if,
11 at the time of adoption, the city or county demonstrates with
12 empirical data that the ordinance is achieving the goal of recycling
13 at least 60 percent of the polystyrene foam food containers
14 generated annually in its jurisdiction.

15 *42394.5. (a) A food vendor may dispense prepared food to a*
16 *customer in a polystyrene foam food container in a city or county*
17 *if that food vendor demonstrates to the satisfaction of the city or*
18 *county that compliance with Section 42392 will impose an undue*
19 *economic hardship. A city or county may exempt the food vendor*
20 *pursuant to this subdivision from the requirements of Section 42392*
21 *until January 1, 2017, or not more than one year from the date of*
22 *the demonstration, whichever date is later.*

23 *(b) A food vendor granted an exemption pursuant to subdivision*
24 *(a) may reapply to the city or county prior to the expiration of the*
25 *exemption.*

26 *(c) The city or county may grant additional exemptions, each*
27 *exemption not to exceed one year, from the requirements of Section*
28 *42392, if the food vendor demonstrates, at the time of application,*
29 *to the satisfaction of the city or county, continued undue economic*
30 *hardship.*

31 42395. This chapter does not preempt the authority of a county,
32 city, or city and county to adopt and enforce additional single-use
33 takeout food packaging ordinances, regulations, or policies that
34 are more restrictive than the applicable standards required by this
35 chapter.

36 42396. The provisions of this chapter are severable. If any
37 provision of this chapter or its application is held invalid, that

- 1 invalidity shall not affect other provisions or applications that can
- 2 be given effect without the invalid provision or application.

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